IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1138 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JADIBEN SHANKARLAL PARMAR & 1 - appellants(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

MR PR ABICHANDANI for appellants(s) : 1 – 2.

MR CR ABICHANDANI for appellants(s) : 1 - 2.
MR KP RAWAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 20/02/2007

ORAL JUDGMENT :

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellants have preferred this appeal

under Section 374 (2) of the Code of Criminal Procedure, 1973 and challenged the judgment and order 26-7-1999 passed by the learned Addl. City Sessions Judge, Court No. 9, Ahmedabad City in Sessions Case No. 183 of 1998, convicting them for the offence punishable under Section 302 and 114 of the I.P. Code and sentencing them to undergo life imprisonment and to pay fine of Rs.1000/-, in default, to undergo rigorous imprisonment of 15 days and also convicting them for the offence punishable u/s 498-A of the I.P. Code and sentencing them to undergo rigorous imprisonment for one year and four months and to pay fine of Rs.500/-, in default, to undergo rigorous imprisonment for 15 days. Both the substantive sentences are ordered to run concurrently.

2. In brief, the prosecution case was that deceased Hiraben was married to Mukeshbhai Shankarlal Parmar before about three years of the incident. Appellant Jadiben Shankarlal was the mother and appellant Ashaben was the sister of Mukeshbhai and thereby the appellant were mother-in-law and sister-in-law respectively of deceased Hiraben. After the marriage, the appellants used to harass deceased Hiraben by passing taunting remarks and were keeping her away from her husband. Before three days of the

incident, the appellants picked up quarrel with the deceased with regard to house-hold work. On 11-7-1997 at about 9-30 p.m. the appellants and deceased Hiraben were inside and her husband and father-in-law were outside the house. At that time, the appellants picked up quarrel with the deceased. The appellants poured kerosene from the kerosene container over deceased Hiraben and threw ignited matchstick on her by saying that “she should burn”. Thereafter, the appellants went outside the house. On account of burns the deceased raised shouts and hence people assembled there and extinguished the fire. Thereafter Hiraben was taken to Civil Hospital, Ahmedabad by one Mukeshbhai Dhulabhai Shah, Advocate and she was admitted to the hospital for treatment.

3. On the basis of the information given by Hiraben Mukeshbhai Parmar offence was registered as I CR No. 226 of 1997 before Shaher Kotada Police Stanton and investigation was started. During the treatment Hiraben succumbed to the injuries on 12-7-1997. Thereafter, her dead body was sent for postmortem. Panchanama of scene of offence, inquest panchanama and panchanama of recovery of the muddamal articles were drawn and the accused were arrested during the course of investigation.

4. On completion of the investigation, charge sheet was laid before the the Court of the learned Metropolitan Magistrate, Court No.3, Ahmedabad for the offence punishable under Sections 302, 114 and 498-A of the I.P. Code. As the offence was exclusively triable by the Court of Sessions, the case was committed to the City Sessions Court, Ahmedabad City and it was registered as Sessions Case No. 183 of 1998. Learned Additional City Sessions Judge, Court No.10, Ahmedabad City framed charge Exh. 2 against the accused for the offences punishable u/ss 498-A, 302 read with Section 114 of the I.P. Code. The charge was read over and explained to the appellants who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of evidence by prosecution, the learned trial Judge explained to the accused the incriminating circumstances appearing against them in the evidence. The accused explained the incriminating evidence in their further statement recorded under Section 313 of the Code of Criminal Procedure, 1973 by stating that on the date of the incident after taking dinner at about 8-30 p.m. they with younger daughter Pushpa and younger son Manoj of

accused Jadiben went on the terrace for sleep as it was hot; that deceased Hiraben and her husband Mukeshbhai were in the room. After some time Mukeshbhai came to the terrace and Hiraben remained in the kitchen for house-hold work; that around 9-30 p.m. the neighbours came out of their gallery shouting that something is burning in their (accused's) house, therefore, Mukeshbhai and Puspaben came down from the terrace and saw that their neighbours; Mukeshbhai, Vinodbhai, Bharatbhai and Manubhai were trying to break open the main door which was locked from inside; that as it was locked from inside, they removed the plank by help of crowbar ('kosh') and opened the stopper of the door and saw that Hiraben was burning; that Hiraben tried to commit suicide by locking from inside by pouring kerosene over herself and igniting the match stick; that it is not true that they had poured kerosene and ignited the matchstick. It is further explained that the neighbours extinguished the fire by throwing the quilt and they were not permitted to go inside the room as they were crying and the room was heavily crowded. It is also explained that they were staying in joint family and as the flat was too small the deceased at the instigation of her parents insisting to stay separately but the accused asked them not to

stay separately for the time being and therefore they believe that the deceased committed suicide. It is further stated that the deceased was being kept very well by the family; that on the previous day of the incident the deceased had complained about pain in her stomach and Mukeshbhai, the husband of the deceased and one Sharadaben wife of advocate Mukeshbhai took deceased to Civil Hospital, Ahmedabad and she was treated there; that they are innocent and they have been falsely implicated in the offence.

5. The accused after recording of their further statement u/s 313 of the Criminal Procedure Code, gave application Exh. 51 to examine certain witnesses. The said application was granted by the learned trial Judge. The accused examined in all five witnesses in their defence.

6. On completion of recording the evidence of defence witnesses, the learned trial Judge heard oral submissions of the learned A.P.P. and the learned advocate for the accused. After hearing them the learned trial Judge concluded that the prosecution proved beyond reasonable doubt the charge levelled against the accused and found them guilty for the offences charged against

them and sentenced them to undergo sentences as mentioned hereinabove. Being aggrieved by the impugned judgment the accused have preferred the present appeal.

7. We have heard learned advocate Mr. Abichandani for the appellants and learned A.P.P. Mr. Rawal for the respondent – State at length and in great detail. We have also perused judgment and the records and proceedings of the case.

8. Learned advocate Mr. Abichandani for the appellants submitted that the manner in which the offence alleged to have been committed, the prosecution failed to prove that death was homicidal in nature. Looking to the place of the incident and the fact that the door was locked from inside, the learned trial Judge committed error in holding that the deceased was done to death by the appellants. He also submitted that the evidence adduced by the prosecution does not prove beyond reasonable doubt that the appellants were involved in the commission of the offence, and that there is no evidence that there was harassment to the deceased from the appellants. Therefore, the learned trial Judge committed error in convicting the appellants. He also submitted that in all there are four statements

which can be termed as the dying declarations and looking to the tenor of these statements, they cannot be said to be reliable statements, and therefore, the learned trial Judge could not have convicted the appellants for the offence of murder on the basis of these statements and that at the most the appellants could be convicted for the offence punishable under Section 306 of the I.P Code. Hence, the appeal deserves to be allowed and impugned judgment requires to be set aside.

9. While opposing the appeal learned A.P.P. submitted that the prosecution produced ample evidence to prove the guilt of the appellants beyond reasonable doubt. He submitted that the statements made by the deceased are consistent and they can be termed as Dying Declarations. He also submitted that the panchanama of scene of offence does not indicate that the door was locked from inside and it was broken open. Therefore, there is no question of theory of suicide as put forward by the appellants. He submitted that there was harassment to the deceased from the appellants and pursuant thereto the deceased was done to death by pouring kerosene over her. He also submitted that the medical evidence clearly establishes that death was homicidal in nature, and therefore, the

trial Judge was justified in recording conviction of the appellants. Hence, no interference is warranted in the impugned judgment and the appeal is required to be dismissed.

10. To prove that death of deceased Hiraben was homicidal, the prosecution examined P.W. 12 Dr. Chandrakant B. Darji who performed postmortem of the dead body of Hiraben, at Exh. 33. According to the doctor cause of death of Hiraben was deep extensive burns over the body. The postmortem report Exh.34 indicates that burn injuries were sustained by the deceased and the cause of death was deep extensive burns over the body. In view of this evidence, it is clear that death of deceased Hiraben occurred on account of burns injuries sustained by her. It is true that the doctor in his cross-examination deposed that the injuries found on the body were possible if a person pours kerosene on oneself and ignites matchstick. In this case, the defence of the appellants is that deceased committed suicide by pouring kerosene over herself and igniting matchstick. In support of his defence that death of Hiraben was suicidal, learned advocate for the appellants mainly relied on panchanama of scene of offence Exh.36, the evidence of D.W. 3 Mukeshbhai D. Shah, a practicing advocate at Exh. 56 and map Exh. 14.

11. Panchanama of scene of offence Exh. 36 indicates that the place of the incident was shown by D.W. 3 Mukeshbhai D. Shah advocate. The prosecution also produced map of the place of the incident at Exh. 14. On conjoint reading of both these documents, it appears that the incident occurred almost in the middle of the room where the burnt pieces of cloth were found. Panchanama of scene of offence Exh. 36 indicates that the door was open and traces of kerosene were found in the gallery as well as in the main room. It also indicates that the burnt pieces of cloth were also found in the gallery also. However, it does not indicate that the door was broken or a wooden plank was removed from the door. It is submitted that though the door was broken it was not recorded in the panchanama. In our view, the scene of offence was shown by an advocate. If the door was broken open or even a plank was removed to open the stopper, it would have been a noticeable feature and would not have gone unnoticed. Therefore, it is difficult to believe that the door was locked from inside but it was not recorded in the panchanama. It is pertinent that on perusal of the panchanama it appears that expert Mr. Sharma from F.S.L. was present at the time of drawing panchanama and after observing the scene of offence he had

instructed to take certain things for examination. In view of this, it would be difficult to believe that the broken door would escape from his notice. Therefore, in our view, it is difficult to accept that the door was locked from inside and the stopper was opened by removing a plank of the door.

12. Learned advocate for the appellants submitted that the photographs of the place of offence were taken, which indicate about the broken door, however, since the photographs were not supporting the prosecution case, the same have been withheld by the prosecution and despite issuance of the summons to produce the said photographs for the defence, the same have not been produced and that has caused prejudice to the defence of the appellants, and so the appellants are entitled to the benefit of doubt. It is true that the appellants made application before the trial court to examine the photographer who allegedly took photographs of the place of the incident and the court had issued summons to the witness. However, it appears that the witness did not appear and so he was not examined. The record indicates that the accused gave purshish Exh. 6 stating that they do not want to examine other witnesses. If the witness did not appear in the court the

accused could have resorted to the legal remedy available to secure his presence. However, the accused did not pursue the remedy and filed the purshish In view of this, it cannot be said that non-examination of the witness caused prejudice to the defence. Therefore, this submission cannot be accepted.

13. D.W. 3 Mukeshbhai Dhulabhai Shah Exh. 56 deposed that he and others knocked the door but as it was not opened, it was torn apart with iron bar. He also deposed that he did not ask Hiraben as to how she sustained burns and that he did not ask the appellants or Mukeshbhai as to how Hiraben sustained burns. The conduct of this witness is not natural as normally a person would immediately make inquiry about the injury more so when he is an advocate. Even the witness has denied that he showed the place of incident at the time of drawing panchanama which is contrary to the contents of pnachanama Exh. 36. The evidence indicates that deceased Hiraben had filed proceedings in the Metropolitan Magistrate Court at Ahmedabad against her husband wherein the witness appeared as an advocate to defend the husband. In our view, the evidence of this witness is not reliable as he is not telling truth with a view to save the appellants who are related to his

client. Even map Exh. 14 and panchanama of scene of offence Exh. 36 do not indicate that a plank of the door was broken open. Therefore, in our view, the defence that the door was locked from inside and it was torn apart and the stopper was opened, cannot be believed.

14. In view of above, now the evidence with regard to nature of death is required to be examined. Inquest panchanama Exh. 49 indicates that burns injuries were all over the body. Considering the evidence of P.W. 12 Dr. Chandrakant Babalal Darji Exh. 33, Postmortem Note Exh. 34, panchanama of scene of offence Exh.36 and inquest panchanama Exh.49, it is difficult to believe that the deceased committed suicide. On conjoint reading of all these evidence it becomes clear that death of Hiraben was homicidal. Therefore, in our opinion, the prosecution proved beyond reasonable doubt that death of Hiraben was homicidal in nature.

15. The prosecution case mainly rests on four statements made by the deceased with regard to the circumstances of the transactions which resulted in her death which can be termed as dying declarations. Out of those four dying declarations, two dying declarations are in the form of history of injuries given to the doctor.

The other two; (i) in the form of first information report and (ii) the statement made by deceased before her father.

16. In order to prove the dying declaration in the form of history of the injuries, the prosecution examined P.W. 10 Dr. Himmatbhai Exh.27. The witness was working as Medical Officer on Emergency Duty in the hospital and Hiraben was brought before him before him in the hospital for treatment immediately after the incident. Deceased Hiraben was treated by this witness and he recorded the history given by deceased Hiraben. It indicates that Hiraben was brought to the hospital by Mukeshbhai D. Shah at about 10-50 p.m. and the witness had examined her and recorded the history given by her at Exh. 29. The evidence also indicates that the patient was conscious and had 1st, 2nd and 3rd degree burns over her body and was sent to the Burns Ward for treatment. According to the witness the deceased gave him the history of injuries that there was quarrel since three days and that the appellants burnt her by pouring kerosene at 9-30 p.m. The history was recorded by him in case paper Exh.29. The case paper indicates that the patient was conscious and she had given the history. It also indicates that there was quarrel since three days and the appellants poured

kerosene and burnt her. The case paper indicates that smell of kerosene was also present. The case paper indicates that deceased gave complete account of her injuries to the doctor and the patient had 1st, 2nd and 3rd degree burns over her body including the sole, palm (except scalp) and some parts of her forehead were also burnt. In view of this, it becomes clear that immediately after the incident Hiraben was taken to the hospital for treatment by Mukeshbhai D. Shah, advocate and the deceased gave history of her injuries to the doctor, implicating the appellants, who recorded the same in the case-paper. The defence has not able to demonstrate that the deceased was not conscious or in fit state of mind to give history or that the history was not given by her. In our view, there is nothing to indicate that the deceased was not conscious or that she did not give the history of her injuries to the Doctor.

17. The evidence indicates that after preliminary treatment in the emergency ward Hiraben was shifted to Burns/Plastic unit where she was examined by P.W. 11 Dr. Parthiv Agrawal and he also recorded the history of injuries. The prosecution examined him at Exh. 30. The witness and Dr. Archana Kajrekar had examined the deceased and the history of the injuries

given by deceased was recorded in the case paper Exh. 31. According to the witness, deceased Hiraben was examined at 11-30 p.m. She was conscious and oriented. The witness deposed that the patient informed that the appellants burnt her by pouring kerosene at 9-30 p.m. and the same was recorded in case paper Exh.31. The witness also deposed that the patient died at 1-10 a.m. The witness denied that the history was recorded from OPD case paper Exh. 29 and also denied that the patient was in state of shock and was unable to speak. The prosecution also produced the case papers regarding treatment at Exh. 32. The case paper Exh.31 indicates that the history was recorded at 10-30 p.m. It also records that the deceased's general condition was poor but was conscious and oriented. Case paper Exh. 32 indicates the nature of injuries and treatment given to her. In our view, when the patient was conscious and oriented there is no reason to believe that she did not give history of her injuries, which was consistent with the history given by her at time of her admission in the hospital. The defence has not been able to demonstrate that the deceased could not have given the history. In view of this consistent evidence, we are of the view that the deceased immediately after her admission in O.P.D. in the hospital gave history of her injuries to the

doctor implicating the appellants in the offence and thereafter, she was admitted in the Burns/Plastic Unit for further treatment where she again gave the same history. It is significant that the deceased was taken to the hospital by Mukeshbhai D. Shah, a practicing advocate. The said witness has been examined by the appellants as defence witness. It is true that the witness deposed that Hiraben was unconscious and that she did not regain consciousness till her death. However, looking to the medical evidence we are of the view that the deceased was conscious and oriented when she gave history of her injuries to the Doctors and that D.W. 3 Mukeshbhai D. Shah Exh. 56 deposed about the consciousness of Hiraben only with a view to shield the appellants (real culprits). The case history given by the deceased was immediately recorded by the doctor who is an independent witness who would have no interest in either side. Version of doctor is supported by record maintained in ordinary course of business. In view of this, it is difficult to believe that the deceased did not give history of her injuries, and therefore these two statements can be considered as dying declarations and they are trustworthy and reliable to connect the appellants with the offence.

18. The prosecution produced F.I.R. given by deceased Hiraben at Exh. 11. It is recorded in the Civil Hospital, Ahmedabad, wherein she has given details about the incident. It is alleged in the F.I.R. that the appellants were passing tauting remarks and before about three days of incident the appellants picked up quarrel with her with regard to house hold work. It is further alleged that on the day of incident the appellants were in the house and they picked up quarrel with her, thereafter appellant Jadiben poured kerosene over her and appellant Ashaben threw ignited matchstick on her and Mukeshbhai D. Shah took her to the hospital for treatment. The details given in the F.I.R. are consistent with the history of injuries given by her to the Doctors. Therefore, we are of the view that the deceased gave information regarding the circumstances of the transaction which resulted into her death.

19. The prosecution examined P.W. 2 Kantilal Panaji Makwana, P.S.I. who recorded F.I.R., at Exh. 10. According to the witness he received 'Yadi' from Police Station Officer (P.S.O.) at 22-45 hours to go to Civil Hospital, Ahmedabad, and therefore, he went to Civil Hospital, Ahmedabad and recorded F.I.R. Exh.11. According

to the witness when he went to the hospital, Hiraben was able to speak. The witness also deposed that when he went to the patient relatives were not present and he wrote a 'Yadi' to the Executive Magistrate to record Dying Declaration but it could not be recorded as Hiraben died before the Executive Magistrate could reach at the hospital. The witness has denied that when he went to the hospital the informant was unconscious and was not in a position to speak. The defence has not been able to demonstrate that the witness did not record the First information Report Exh. 11 as given by the informant.

20. The prosecution produced the extract of police station diary at Exh. 16 and examined P.W. 4 Shanabhai Gemabhai at Exh. 15. The evidence of this witness indicates that on the basis of the information given by Hiraben offence was registered against the appellants and entry was made in that regard in the station diary. The prosecution also produced report given to register offence at Exh. 12. It indicates that on the basis of information given by Hiraben the offence was registered at 23-45 hours.

21. On overall examination of the evidence, it

emerges that deceased Hiraben made statements with regard to her injuries before the doctors in the hospital as well as before the Police Officer who recorded F.I.R. There is nothing to indicate that the declarations made by the deceased were not trustworthy or unreliable. All the statements which can be taken as dying declarations are consistent. Therefore, in our view, the submission that the dying declarations in the form of history given by deceased before the doctors and the F.I.R. cannot be relied on, cannot be accepted.

22. The prosecution also produced 'Yadi' written to the Executive Magistrate at Exh.19. The 'Yadi' indicates that it was written to the Executive Magistrate to record the dying declaration. The 'Yadi' bears an endorsement of the doctor that the patient was conscious at 11-30 p.m. The endorsement made by the Executive Magistrate indicates that 'Yadi' was produced before him at 00-40 hours. The case papers indicate that the injured died at 1-10 a.m. In view of this, it appears that the dying declaration could not be recorded by the Executive Magistrate as the patient died before the witness could reach at the hospital to record the dying declaration.

23. In order to prove dying declaration before the father of deceased, the prosecution examined P.W. 1 Mafatlal Ranchhodbhai at Exh. 9. The witness has deposed about harassment meted out to the deceased. The evidence also indicates that he was informed by the police about the incident at 12-00 at night. According to the witness, he went to the hospital and on inquiry with the deceased she gave the history of her injuries by saying that appellant Jadiben poured kerosene over her and appellant Ashaben ignited matchstick and threw it over her. The defence has not been able to demonstrate that the deceased was not telling the truth. The statement with regard to the injuries given by the deceased is consistent with the history of injuries given by her to the Doctors. Therefore, in our view, the deceased also made a statement about the circumstances of the transaction which resulted in to her death before her father and the defence failed to indicate that the deceased did not make such statement before her father P.W.I. Mafatlal Exh. 9.

24. The only defence raised by the appellants is that the deceased closed the door from inside and committed suicide as her demand to stay separately was not acceded to. There is no evidence to indicate that the deceased was

insisting to stay separately. On the contrary, the evidence indicates that there were disputes between the deceased and family members of her husband for which the deceased had filed complaint. The evidence also indicates that the family members of Hiraben's husband gave threats to burn her. Therefore, it is difficult to believe that Hiraben committed suicide as her demand to stay separately was not fulfilled. In order to prove that the door was locked from inside and the stopper was opened by breaking a plank of door, the appellants examined certain witnesses.

25. The defence examined D.W. 1 Yusufmiya Ismailmiya Shaikh at Exh. 52, the Fire Brigade personnel who reached at the place of the incident with ambulance. The evidence of this witness indicates that when the witness went to the place of the incident the door was open and the injured was taken to the hospital in the ambulance. The evidence does not throw any light with regard to the defence that the stopper of the door was opened by tearing apart the door.

26. The defence also examined D.W. 3 Mukeshbhai Dhulabhai Shah at Exh. 56 who is a practicing advocate. According to the witness, on hearing shouts he went to the house of the appellants and

knocked the door but it was not opened, therefore, the door was torn apart and the stopper was opened. The witness also deposed that except deceased Hiraben, the appellants and other members of the family were at the terrace and she was unconscious. From the cross-examination of this witness, it appears that proceedings u/s 125 of the Code of Criminal Procedure, 1973 were filed against the husband of deceased Hiraben and the witness represented the husband of deceased Hiraben. The evidence of this witness also indicates that Hiraben had also filed one complaint under Section 498-A of the I.P. Code against her husband Mukeshkumar and his family members wherein also the witness represented them as advocate. It is also admitted by the witness that allegation in that complaint was that the family members of husband of Hiraben were giving threats to burn her. It is also very strange that the witness deposed that he did not ask Hiraben as to how she sustained burns or that he did not ask the appellants as to how Hiraben had sustained burns. The evidence indicates that the statement of this witness was also recorded during the investigation and that he had stated about the fact of breaking open of the door and had shown the place of incident while drawing panchanama Exh. 36. However, strangely the

panchanama does not show that the door was broken open. The witness is a practicing advocate, and therefore,it is difficult to believe that he would not insist for drawing of appropriate panchanama. Considering the fact that the witness had represented the husband of the deceased and his family members in the proceedings, in our view, the deposition of the witness cannot be relied upon in support of the defence that the deceased committed suicide by locking the house from inside. Moreover, there are number of discrepancies in the evidence of this witness. Therefore, it is difficult to believe that the appellants are being falsely implicated in the offence.

27. The defence also examined D.W. 4 Vinodbhai Balubhai Shrimali at Exh. 59 who was the neighbour of deceased Hiraben. The evidence of this witness indicates that he brought the crowbar and the door was torn apart. But as observed earlier the panchanama does not indicate that the door was torn apart. Similarly, the crowbar is not recovered. Therefore, it is difficult to believe that the witness brought crowbar and the door was torn apart.

28. The defence also examined D.W. 5 Mukeshbhai Shankarlal the husband of deceased Hiraben at

Exh. 59-A. The evidence of this witness indicates that deceased Hiraben was insisting upon staying separately from his parents and was also giving threats to commit suicide. However, the evidence of this witness does not indicate that the deceased committed suicide by pouring kerosene. It is significant that the witness came from the terrace on hearing shouts but he did not help in breaking open the alleged locked door. It is also very strange that the witness did not accompany the injured to the hospital simply because the Ambulance van was full. This conduct is unusual. Normally, husband would accompany his wife immediately to the hospital for treatment. Similarly, the witness did not inform the parents of the deceased immediately after the incident. Therefore, in our view, the evidence of this witness that the deceased committed suicide by locking the door from inside, cannot be accepted.

29. Considering the above defence evidence, we are of the view that the evidence does not inspire confidence. The prosecution evidence with regard to the statements made by the deceased with regard to her injuries is consistent and coherent. There is no reason to doubt about trustworthiness of these dying declarations.

30. As observed earlier the evidence clearly indicates the involvement of appellants in the offence. We are unable to accept that non-examination of the photographer as the defence witness despite issuance of summons has caused prejudice to the appellants. In view of this, in our view, the prosecution proved beyond reasonable doubt that the appellants caused the bodily injuries to the deceased with an intention to cause her death and the appellants knew that the injuries are likely to cause death. The evidence also indicates that the appellants were present when the offence was committed and thereby they have abetted the offence and hence the conviction of the appellants for the offence punishable u/s 302 read with Section 114 of the I.P. Code recorded by the trial Judge is legal, just and proper. The learned trial Judge was justified in recording the conviction of the appellants for the offence punishable u/s 302 read with Section 114 of the I.P. Code,

31. As regards the conviction of the appellants for the offence punishable u/s 498-A of the I.P. Code is concerned, it is not the prosecution case that it was willful conduct of the appellants which drow deceased Hiraben to commit suicide. On the contrary, it is the case of the prosecution

that the appellants committed murder of deceased Hiraben. It was the case of prosecution that the appellants used to pass taunting remarks and were inflicting mental and physical cruelty to the deceased. However, there is no evidence to indicate that physical and mental cruelty was inflicted by the appellants with a view to coerce her to meet with unlawful demands. Therefore, the learned trial Judge was not justified in recording the conviction of the appellants u/s 498-A of the I. P. Code. In view of above, the conviction of the appellants for the offence punishable u/s 498-A of the I.P. Code recorded by the trial Judge requires to be set aside and the appellants are required to be acquitted of the offence punishable u/s 498-A of the I.P. Code.

32. In view of above, the present appeal partly succeeds. The conviction of the appellants recorded by the learned Addl. City Sessions Judge, Court No.9, Ahmedabad City in Sessions Case No. 183 of 1998 for the offence punishable u/s 302 read with Section 114 of the I.P. Code by judgment and order dated 26-7-1999 is sustained and to that extent the said judgment and order of conviction and sentence is confirmed. However, the conviction of the appellants for the offence punishable u/s 498-A of the I.P. Code recorded by

the trial Judge is set aside and the appellants are acquitted of the offence punishable u/s 498-A of the I.P. Code. Fine, if paid, be returned to the appellants.

33. The muddamal be disposed of as directed by the trial court.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

/JVSatwara/